## SENATE, No. 524

# **STATE OF NEW JERSEY**

### 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by: Senator NIA H. GILL District 34 (Essex and Passaic)

#### **SYNOPSIS**

Prohibits practice of requiring credit check as condition of employment.

#### **CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning employer discrimination and supplementing 2 Title 34 of the Revised Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. No employer or employer's agent, representative, or designee shall seek to obtain or require a current or prospective employee to provide or consent to the creation of a credit report that contains information about the current or prospective employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment, unless the employer is required by law to obtain a credit report, or the employer reasonably believes that the employee has engaged in a specific activity that is financial in nature and constitutes a violation of law.

- 2. Nothing in section 1 of this act shall prevent a credit inquiry or employment action if credit history is an established bona fide occupational requirement of a particular position or employment classification. Credit history shall be considered a bona fide job qualification for any current or prospective employee being evaluated for a position that:
- a. Is a managerial position which involves setting the financial direction or control of the business;
- b. Involves access to customers', employees', or employers' personal or financial information, other than information customarily provided in a retail transaction;
- c. Involves a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, transfer money or enter into contracts; or
  - d. Provides an expense account for travel.

3. An employer shall not require an individual to waive or limit any protection granted under this act as a condition of applying for or receiving an offer of employment. An agreement to waive any right or protection under this act is against the public policy of this State and is void and unenforceable.

- 4. A person shall not retaliate or discriminate against an individual because the individual has done or was about to do any of the following:
- a. File a complaint under this act;
- b. Testify, assist, or participate in an investigation, proceeding, or action concerning a violation of this act; or
- c. Otherwise oppose a violation of this act.

- 5. Upon violation of any provision of this act, an aggrieved person may, in addition to any other available remedy, institute a civil action in a court of competent jurisdiction, within one year from the date of the alleged violation. In response to the action, the court may, as it deems appropriate, order or award any one or more of the following:
  - a. With respect to a prospective employee:
  - (1) injunctive relief;
  - (2) compensatory and consequential damages incurred by the prospective employee as a result of the violation, taking into consideration any failure to hire in connection with credit reports obtained in violation of this act; or
    - (3) reasonable attorneys' fees and court costs.
    - b. With respect to a current or former employee:
  - (1) injunctive relief as it deems appropriate, including reinstatement of the employee to the same position held before the violation or the position the employee would have held but for the violation, as well as the reinstatement of full fringe benefits and seniority rights;
  - (2) compensatory and consequential damages incurred by the employee or former employee as a result of the violation, including compensation for lost wages, benefits and other remuneration; or
    - (3) reasonable attorneys' fees and court costs.

6. Any employer who violates any provision of this act shall be subject to a civil penalty in an amount not to exceed \$5,000 for the first violation and \$10,000 for each subsequent violation, collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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7. This act shall take effect immediately.

#### STATEMENT

This bill prohibits an employer from requiring a credit check on a current or prospective employee as a condition of employment, unless the employer is required to do so by law, or reasonably believes that an employee has engaged in a specific activity that is financial in nature and constitutes a violation of law. The bill does not prevent an employer from a credit inquiry or employment action if credit history is a bona fide occupational requirement of a particular position or employment classification.

The bill prohibits an employer from requiring a prospective employee to waive or limit any protection granted under the bill as a condition of applying for or receiving an offer of employment.

- The bill also prohibits retaliation or discrimination against an individual because the individual has done or was about to do any of the following:
  - (1) file a complaint pursuant to provisions of the bill;
  - (2) testify, assist, or participate in an investigation, proceeding, or action concerning a violation of the bill; or
    - (3) otherwise oppose a violation of the bill.

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8 Any current, prospective, or former employee aggrieved under 9 the provisions of the bill may bring action in a court of competent jurisdiction for appropriate injunctive relief and damages, including 10 reasonable attorneys' fees and court costs. In addition, the bill 11 12 provides for the imposition of civil penalties in an amount not to exceed \$5,000 for the first violation, or \$10,000 for each 13 14 subsequent violation, collectible by the Commissioner of Labor and 15 Workforce Development.